

REMARKS

Entry of the amendments is respectfully requested. Claim 14 has been amended. New claims 34-40 have been added. Claims 1-4, 6-11, 13-22, and 24-40 are pending in the application. Favorable reconsideration and allowance of this application is respectfully requested in light of the foregoing amendments and the remarks that follow.

1. Examiner Interview

The applicant and applicant's representative wish to thank Examiner Goins for her courtesy during the telephone interview of December 15, 2003. During this interview, the prior art as it has been applied to the claimed invention was discussed briefly. The Examiner indicated that she would consider applicant's arguments when the formal response is filed.

2. Amendments to the Claims

Claim 14 has been amended to correct minor typographical errors found upon a review of the application. Namely, an extra period was removed from the claim.

3. Rejections Based on the Prior Art

a. Recapitulation of the Invention<sup>1</sup>

The invention relates to a barricade system and includes supports positioned in a spaced-apart fashion across an airport taxiway to be closed. A lightable rope is fastened to the supports to close the airport taxiway to vehicular traffic. The lightable rope is energizable by a single electrical power source such as a generator or an electrical outlet. The components of the system can be stowed and transported on a trailer or the like, making the system very portable. The barricade system is particularly suited for use in closing airport taxiways, in which case it warns pilots that a taxiway is closed and prevents entry onto the taxiway. The entire system (or at least those parts of it that are placed on the taxiway) also is sufficiently frangible to permit its use as a taxiway barricade system. The system is portable and can be carried on a trailer.

b. Rejection of Claims 1 and 15 under 35 U.S.C. §103

The rejection of claims 1 and 15 as unpatentable over U.S. Patent No. 5,641,241 to Rushing in view of U.S. Patent No. 5,986,581 to Magdaleno, II et al. is respectfully traversed, because, *inter alia*, it is improper to combine the references. Furthermore, even if the references were combined, the invention would not result. The Examiner

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<sup>1</sup> This Section 3a is intended to provide the Examiner with some background information on the state of the art and applicant's contribution to it. It is *not* intended to distinguish specific claims from the prior art. That task is performed in Sections 3b-3e below.

correctly recognizes that Rushing fails to show a barricade system for an airport taxiway and cites Magdaleno II et al. to cure this deficiency.

Rushing discloses a system 10 that includes anti-glare paddles 24 mounted on a median barrier 12 having a base portion 14, a pair of formed sidewalls 16, 18, terminating in an upper flat top portion 20. The median barrier 12 is of the type that is commonly used in the highway industry. The median barrier 12 is usually provided in lengths of ten to twenty feet. When set end to end, it forms a continuous barrier between automobile traffic moving in opposite directions. (col. 2, lines 47-56).

The paddles 24 include a vertically extending body portion 26, found in substantially a circular base portion 28, the lower end 29 of which is mounted upon the upper surface 20 of barrier 12. (col. 2, lines 59-63).

A mounting device 34 is used for housing a lighting assembly 36 and is secured to an upper end 27 of each paddle 24, as seen in FIG. 1. Each mounting device 34 includes an upper tube holding portion 40, which includes a continuous ring 42 defining an orifice 44 therethrough. A lighting tubing 36 is threaded through each orifice 44. (col. 3, lines 17-31).

As noted by the Examiner, Rushing does not specifically disclose its barricade system for an airport taxiway, as claims 1 and 15 require. Instead, it is designed to form a continuous barrier between automobile traffic moving in opposite directions. (col. 2, lines 54-56). Accordingly, the Rushing median system 12 has to be formed from a material that will prevent cars from crossing into oncoming traffic. Typically, this is

accomplished with concrete. While this type of material is appropriate for such applications, it is not appropriate for use on airport taxiways due to the fact that concrete systems are heavy and difficult to transport, install, and remove. Moreover, any airplane that runs into them is likely to suffer nose and propeller damage.

The Examiner cites Magdaleno, II et al. to cure this deficiency. Magdaleno, II et al. discloses an infrared beacon system that was designed as a portable, and quickly deployable landing zone marker for Special Operations personnel. (col. 2, lines 17-19). The system includes a circuit board 100, a reel and wind-up housing 101, an IR light emitting diode strip 102, and batteries 103 to power portable IR light emitting diodes 104, as shown, the system is a 3/4" strip with LEDs placed every meter on each side that is rolled up on a reel. To deploy the marker, the strip is staked at one end and the strip is simply unrolled off the reel. (col. 2, lines 27-33).

The teachings of Magdaleno, II et al. are not applicable to those of Rushing. While it is true that some barricade systems are designed to be used on highways and other barricade systems on paths traversed by airplanes, the teachings of Magdaleno, II et al. do not imply that the barricade system of Rushing is applicable to airport taxiways. As noted above, the median barriers 12 of Rushing cannot be used around airplanes due to the material from which they are made. Thus, it is improper to combine the teachings of Rushing and Magdaleno, II et al. To do otherwise would be to pick and choose amongst the isolated teachings of the individual references, using applicant's own disclosure as a template or mosaic to latch on to those teachings that support the

Examiner's position while ignoring those that do not. The Federal Circuit has held that a rejection based on obviousness cannot be predicated upon such an approach:

It is impermissible within the framework of section 103 to pick and chose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.

*In re Hedges*, 228 USPQ 685, 687 (Fed. Cir. 1986) (citing *In re Wesslau*, 147 USPQ 391, 393 (CCPA 1965)); see also MPEP §2143.01.

Furthermore, even if the references were combined, the invention would not result. The Magdaleno, II et al. infrared beacon system is not used on an *airport taxiway*, which is a route that leads aircraft to runways before flight take-off and direct landed aircraft to the airport terminal, a hanger, or another location that is spaced from the runway. Instead, the infrared beacon system of Magdaleno, II et al. is used as a landing zone marker. (col. 2, lines 18-19). Therefore, if the references were combined, neither a barricade system for an airport taxiway, as claim 1 recites, nor a system for closing an airport taxiway to vehicular traffic, as claim 15 recites, would result.

In light of the foregoing, withdrawal of the rejection of claims 1 and 15 is respectfully requested.

c. Rejection of Claims 2, 3, and 8-10 under 35 U.S.C. §103

The rejection of claims 2, 3, and 8-10 as unpatentable over Rushing in view of Magdaleno, II et al. and further in view of U.S. Patent No. 6,082,867 to Chien is respectfully traversed, because, *inter alia* it is improper to combine or modify the references as suggested by the Examiner. Furthermore, even if the references were combined, the invention would not result. The Examiner correctly recognizes that the combined teachings of Rushing and Magdaleno, II et al. fail to show the use of the claimed electrical power source and cites Chien to cure this deficiency. However, Chien cannot cure the basic deficiency in the combined teachings of Rushing and Magdaleno II et al. That is, a barricade system for an airport taxiway would not result by adding the teachings of Chien.

Chien discloses a three-dimensional electro-luminescent lighting element that includes a center conductor 1 surrounded by at least one said of electro-luminescent layers 2, which in turn is surrounded by an outer conductor 3. (col. 6, lines 10-13). The three-dimensional electro-luminescent lighting element is surrounded by a protective outer layer 15 made of PVC or a like material. (col. 6, lines 64-66). The electro-luminescent lighting element may be included in various applications, most notably a jersey barrier 116, street barricade 117, guard rail installation 118, and traffic cone-barrier 119, as are illustrated in Figs. 6A-6D of Chien.

The various applications disclosed in Chien are not suitable for use on an airport taxiway. For example, the jersey barrier 116, which is typically made of concrete, which is not appropriate for use on airport taxiways due to the fact that concrete systems are

heavy and difficult to transport, install, and remove. Moreover, any airplane that runs into them is likely to suffer nose and propeller damage. This is also true for the guard rail installation 118. The street barricade 117 cannot be used on an airport taxiway because it is not stable enough. The traffic cone/barrier setup 119 cannot be used to close an airplane taxiway because the exhaust of an airplane would cause them to roll over unless it is ballasted with a sandbag. However, sandbags are not permitted on airport taxiways because they could release sand, which could be sucked into the intake of an engine, doing major damage to the engine.

Therefore, the teachings of Chien cannot cure the base deficiency in the combined teachings of Rushing and Magdaleno, II et al. because even if the Chien teachings were added, a barricade system for an airport taxiway would not result. Accordingly, withdrawal of the rejection of claims 2, 3, and 8-10 is requested.

d. Rejection of Claims 4, 6, 7, 11, 13, 17-22, 24, and 32 under 35 U.S.C. §103

The rejection of claims 4, 6, 7, 11, 13, 17-22, 24, and 32 as unpatentable over Rushing in view of Magdaleno, II et al. and further in view of U.S. Patent No. 4,090,472 to York is respectfully traversed, because, *inter alia*, York is not properly combinable with the other references. Furthermore, even if the references were combined, the invention would not result. The Examiner correctly recognizes that the combined teachings of Rushing and Magdaleno, II et al. fail to show a barricade system that

includes a trailer, a reel carried by the trailer and on which the lightable rope can be retained, wherein the lightable rope includes a first end which is attached to one of the supports and a second end which is supported by the reel and cites York to cure these deficiencies. However, York is not properly combinable with Rushing and Magdaleno, II et al. because 1) it is non-analogous art and 2) it teaches away from the claimed invention.

York discloses a corral for horses that includes a plurality of posts 52, a flexible hot line 54, and a warning or guard line 56. (col. 5, lines 7-10). A power source is mounted on a side wall 18 of the trailer 10. The power source is a 6-volt electric battery contained within a waterproof housing. (col. 6, lines 50-53). A large reel 118 is carried on the trailer (at side wall 18) upon which the hot line 54 and guard line 56 can be retained. (col. 6, line 63-col. 7, line 3).

York is non-analogous art, as it discloses a trailer 10 and a corral enclosure 12 for horses. (col. 4, lines 21-26). A prior art reference is analogous if the reference is in the field of applicant's endeavor or, if not, the reference is reasonably pertinent to the particular problem with which the inventor was concerned. MPEP 2145 (citing *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992)). Neither condition is met here. First, York describes a corral enclosure for horses. Clearly, a corral enclosure for horses is *not* in the field of the applicant's endeavor.

Second, York is *not* reasonably pertinent to the particular problem with which the inventor was concerned. The applicant's particular problem involved how to close an



airport taxiway to vehicular traffic. For such, the applicant had to consider, e.g., how to close an airport taxiway and yet have the system (or at least those parts of it that are placed on the taxiway) be sufficiently frangible to permit its use as a taxiway barricade system. (specification, page 3, lines 7-8). With previous barricades, any airplane that ran into them was likely to suffer nose and propeller damage. (specification, page 1, line 17-18). The applicant's problem thus involved how to provide a system that would permit an airplane or another airport vehicle to strike the system, and yet break such that minimal, if any, damage is inflicted on the airplane or other airport vehicle. In contrast, the problems confronting the inventor of the York patent included how to get horses into a corral enclosure, how to contain horses within the corral enclosure, and how to move the horses back into the trailer from the corral enclosure. These are very different problems than the problem that the applicant faced. Therefore, because neither of the two conditions for analogous art is met, the York patent cannot be considered analogous art. As such, it is not properly combinable with the Rushing and Magdaleno, II et al. patents.

Furthermore, York teaches away from the claimed invention. A prior art reference teaches away from the proposed combination of references if it leaves the impression that the product would not have the property sought by the applicant. *In re Caldwell*, 319 F.2d 254, 256, 138 USPQ 243, 245 (C.C.P.A. 1963). In York, the trailer becomes part of the corral enclosure. This is essential because the horses are transported in the trailer 10. When they are to be let out, the corral is built to include the trailer so that when the door 22 of the trailer 10 is opened, the horses immediately enter the corral.

When the horses are returned to the trailer 10, they are moved directly from the corral back into the trailer. Clearly, combining this teaching with those of the Rushing and Magdaleno, II et al. patents would produce a product that has a property *not* sought by the applicant. That is, the applicant would not want a trailer as part of its barricade system because the applicant would not want a trailer on the airport taxiway. The York patent is not properly combinable with the Rushing and Magdaleno, II et al. patents because it teaches away from the claimed invention. ("It is improper to combine references where the references teach away from their combination." MPEP 2145 (citing *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983))). For these two reasons, i.e., the York patent is non-analogous art and teaches away from the claimed invention, it is not proper to combine the teachings of the Rushing and Magdaleno, II et al. patents. Furthermore, even if the references were combined, the invention would not result.

For instance, claim 4 depends from claim 1 and further requires "wherein, when the system is in use, the lightable rope includes a first end which is attached to one of the supports and a second end which is supported by the reel." As the Examiner notes in the Office Action, Rushing fails to disclose a reel. Although Magdaleno, II et al. discloses a reel, its strip is staked at one end and the strip is simply unrolled off the wheel. (col. 2, lines 31-33).

In York, which also discloses a reel, the trailer 10 becomes part of the corral structure, and one end of a hot line 54 is connected to one side of the trailer 10, and another end of the hot line 54 is connected to another side of the trailer 10, as is shown in

Figs. 2 and 3. Thus, even the combined teachings of the cited references fail to teach or suggest each and every limitation of claim 4.

Claim 6 depends from claim 1 and further requires "wherein the stanchions are removable from the bases." As the Examiner admits, Rushing fails to teach or suggest that the claimed stanchions are removable from the bases. The Examiner cites York to cure this deficiency. Specifically, the Examiner cites subassemblies 38 with tubular sleeves 42 positioned to be inserted into an extending ground plate 40. Although subassemblies 38 could be construed to be stanchions, they are not the "supports which are positionable in a spaced-apart fashion across the airport taxiway to be closed and which comprise stanchions" of claim 6. Instead, the subassemblies 38 of York are used to rest the rear bumper 36 of the trailer thereon (col. 4, lines 58-62). Furthermore, the subassemblies are not supports on which a lightable rope is fastenable to close the path to vehicular traffic, as claim 6 additionally requires. Indeed, this would not be desirable since the York subassemblies 38 are positioned underneath its trailer. Thus, the combined references do not teach or suggest a support "wherein the stanchions are removable from the base," as claim 6 requires.

Claim 7 depends from claim 1 and is believed to be in condition for allowance for at least the reasons that claim 1 is believed to be condition for allowance. The additional teachings of York cannot cure the aforementioned base deficiency in the combined teachings of Rushing and Magdeleno, II, et al.

Claim 11 depends from claim 1 and further requires "a trailer which carries the supports and the lightable rope when the barricade system is not in use." As noted above, although the corral structure of York includes a trailer, it is inappropriate to combine the teachings of York with the other references, as it would result in having a trailer be part of the barricade system of the claims.

Independent claim 13 requires "wherein the supports and the lightable rope are sufficiently frangible to permit their use on the airport taxiway." As the Examiner admits, Rushing fails to disclose that the supports and the lightable rope are sufficiently frangible and cites York to cure this deficiency. In particular, the Examiner cites the "subassemblies 38 with tubular sleeves 42 positioned to be inserted into an extending ground plate 40." Although, as noted above, applicant disagrees that the York subassemblies 38 correspond to the supports of the claims, there is no discussion in York of the subassemblies 38 being frangible. Instead, York states that tubular sleeve 42 is positioned centrally on the ground plates 40. It could be positioned in a non-frangible manner. Furthermore, and more importantly, even if the subassemblies 38 were frangible, there is no teaching or suggestion in York of a lightable rope that is sufficiently frangible, much less one that is sufficiently frangible to permit its use on an airport taxiway.

Independent claim 17 requires the following steps:

- (A) positioning bases across the airport taxiway in a spaced-apart fashion; and
- (B) attaching stanchions to the bases.

As noted above with respect to claim 6, the combined teachings of Rushing, Magdaleno, II et al., and York fail to teach or suggest stanchions that are removable from bases. Therefore, the method of claim 17, which requires the aforementioned steps, is not obvious in light of the combined teachings of the cited references.

Dependent claims 18-22 are believed to be in condition for allowance for incorporating by reference the limitations of claim 17 and for defining additional features of the invention, which, when considered in combination with those of claim 17, are not disclosed by the prior art relied upon in the rejection.

Independent claim 24 requires "positioning supports across the airport taxiway in a spaced-apart fashion." As noted above with respect to claims 1 and 15, the combined teachings fail to teach or suggest a barricade system that would be usable on an airport taxiway. The additional teachings of York are not properly combinable with those of Rushing and Magdaleno, II et al. Furthermore, even if the references were combined, the invention of claim 24 would not result because York fails to cure the base deficiency in the combined teachings of Rushing and Magdaleno, II et al. Therefore, one skilled in the art would not place the median barrier 12 of Rushing across an airport taxiway.

Claim 32 depends from claims 1 and 4 and is believed to be in condition for allowance for at least the reasons that claims 1 and 4 are believed to be condition for allowance.

In sum, claims 4, 6, 7, 11, 13, 17-22, 24, and 32 are non-obvious over Rushing in view of Magdaleno, II et al. and further in view of York, because York is not properly combinable with the other references. Furthermore, even if the references were combined, the invention would not result. In light of the foregoing arguments, withdrawal of the rejection of claims 4, 6, 7, 11, 13, 17-22, 24, and 32 is respectfully requested.

e. Rejection of Claims 14, 16, 25-31, and 33 under 35 U.S.C. §103

The rejection of claims 14, 16, 25-31, and 33 as unpatentable over York in view of Chien and further in view of Magdaleno, II et al. is respectfully traversed, because, *inter alia*, York is not properly combinable with Chien and Magdaleno II et al. Furthermore, even if the references were combined, the invention would not result.

For the above-stated reasons, i.e., the York patent is non-analogous art and teaches away from the claimed invention, it is not proper to combine the teachings of the York and Chien patents.

Independent claim 14 requires "supports which are carried on the trailer when the system is not in use and which, when in use, are positioned in a spaced-apart fashion on the *airport taxiway* to be closed." The Examiner correctly recognizes that York fails to show a barricade system used on an airport taxiway and cites Magdaleno, II et al. to cure this deficiency. However, as noted above with respect to claims 1 and 15, the infrared beacon system of Magdaleno, II et al. is not used on an airport *taxiway*. Instead, it is used

as a landing zone marker. Therefore, even if the references were combined, the invention would not result.

Independent claim 16 requires

- (C) an illuminatable barricade which is carried on the moveable platform when the system is not in use and which, when in use, is fastened to all of the stanchions to close the airport taxiway to vehicular traffic; . . . and
- (F) signage carried by at least one stanchion.

The Examiner cites Chien for its teaching of signage. However, in Chien, the only barricade system that includes a sign has the sign hanging from the rope-like electro-luminescent lighting element 115 such that it is hung *between* the two traffic cones, as is shown in Fig. 6D. In contrast, the claimed system requires that the signage be carried on at least one stanchion. This provides a system that is more easily set up and taken down. To set up the system shown in Fig. 6D of the Chien patent, the sign would have to be threaded onto the element 115 and then the element 115 would be placed over the traffic cone. Furthermore, to take down the system of Chien, both the element 115 would have to be removed from the traffic cones and the sign unstrung from the element 115, which would consume time. Moreover, if the sign of Chien were struck, it could fly off the element 115 and be sucked into the engine intake. Thus, even if the references were combined, the invention would not result.

Independent claim 25 requires the step of "(C) positioning the trailer in a position spaced from the airport taxiway." As the Examiner admits, the York trailer is not in such

a position. Instead, the York trailer is part of the corral enclosure. No cure for this deficiency is presented in the Office Action. A review of the cited references finds no such teaching.

Dependent claims 26-30 are believed to be in condition for allowance for incorporating by reference the limitations of claim 25 and for defining additional features of the invention, which, when considered in combination with those of claim 25, are neither disclosed nor suggested by the prior art relied upon in the rejection.

For example, claim 29 requires "wherein, during step (G), the trailer is located laterally adjacent the airport taxiway." Again, no cure for this deficiency is presented in the Office Action and a review of the cited references finds no such teaching.

Dependent claim 31 is believed to be in condition for allowance for incorporating by reference the limitations of claim 16 and for defining additional features of the invention, which, when considered in combination with those of claim 16, are neither disclosed nor suggested by the prior art relied upon in the rejection. Claim 31 additionally requires "wherein the signage is permanently mounted to the stanchion." As noted above, Chien fails to teach signage carried by at least one stanchion, much less signage that is permanently mounted thereon.

Dependent claim 33 is believed to be in condition for allowance for incorporating by reference the limitations of claim 14 and for defining additional features of the invention, which, when considered in combination with those of claim 14, are neither disclosed nor suggested by the prior art relied upon in the rejection.



In sum, claims 14, 16, 25-31, and 33 are non-obvious over York in view of Chien and further in view of Magdeleno, because York is not properly combinable with the other references. Furthermore, even if the references were combined, the invention would not result. In light of the foregoing arguments, withdrawal of the rejection of claims 14, 16, 25-31, and 33 is respectfully requested.

4. New Claims

New claims 34-40 depend from one of the previously presented claims and is believed to be in condition for allowance for at least the reasons that the base claim is believed to be in condition for allowance. The following additional reasons are presented in support of their allowance.

Claim 34 depends from claim 1, and further requires "wherein the supports and the lightable rope are sufficiently frangible to permit their use on the airport taxiway." Claim 37 depends from claim 15, and further requires "wherein the stanchions, the bases, and the barricade are sufficiently frangible to permit their use on the airport taxiway." As noted above, this frangible requirement is neither taught nor suggested by the cited references.

Claims 35 and 36 depend from claims 4 and 14, respectively, and further require "when the system is in use, the trailer can be positioned away from the airport taxiway." Claim 38 depends from claim 16, and further requires "wherein, when the system is in use, the platform can be positioned away from the airport taxiway." As is discussed

above, the positioning of a trailer (or platform) away from an airport taxiway is neither taught nor suggested by the prior art of record.

Claims 39 and 40 depend from claims 17 and 24, respectively, and require "in the event of a plane hitting at least one of the supports and the rope, breaking the part that was hit." As should be clear from the arguments presented in relation to claim 13, the breaking step is neither taught nor suggested by the combined teachings of the cited references.

In sum, the newly added dependent claims are believed to be in condition for allowance for reciting additional features of the invention.

#### CONCLUSION

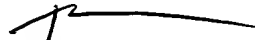
It is submitted that claims 1-33 are in compliance with 35 U.S.C. § 103 and each defines patentable subject matter. New claims 34-40 are also in condition for allowance. A Notice of Allowance is therefore respectfully requested.

A check in the amount of \$63 is enclosed in payment for seven additional dependent claims by a small entity. No other fee is believed to be payable with this communication. Nevertheless, should the Examiner consider any other fees to be payable in conjunction with this or any future communication, authorization is given to direct payment of such fees, or credit any overpayment to Deposit Account No. 50-1170.

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The Examiner is invited to contact the undersigned by telephone if it would help expedite matters.

Respectfully submitted,



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